

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT
717 MADISON PLACE, N.W.
WASHINGTON, D.C. 20439

Jan Horbaly
Clerk of Court

202- 633-6550
202-633-9632 (F)

March 9, 2006

Dear Reader:

Enclosed are Federal Circuit Rule 27(h), effective *December 17, 2004*, revised Federal Circuit Rules 46(c) and 52(a)(3), effective *January 1, 2005*, revised Federal Circuit Rule 28(a)(5) effective *February 4, 2005* and revised Federal Circuit Rule 35 and 47.11 effective *March 9, 2006*, which should be inserted into the RULES OF PRACTICE dated May 1, 2004. Additionally, you should be aware that the Federal Rules of Appellate Procedure have been amended, effective *December 1, 2005*, i.e., Rules 4, 26, 27, 32, 34, 35, 45 and new Fed. R. App. P. 28.1.

New Federal Rule of Appellate Procedure 28.1 increases the word limitations for the four briefs in cross-appeals. Rule 28.1 provides that the four briefs not exceed 14,000, 16,500, 14,000, and 7,000 words respectively. The former rules allowed 14,000, 14,000, 7,000, and 7,000 words respectively.

The change to Federal Circuit Rule 27(h)(4) authorizes the clerk to act on consented to or unopposed motions to extend for not more than 60 days the time for filing a principal brief. This is in addition to the clerk's delegated authority to extend for not more than 30 days the time for taking any other action permitted by the rules or an order of the court. A sentence has been added to the Practice Note following the rule stating no further extensions should be anticipated.

The changes to Federal Circuit Rules 46(c) and 52(a)(3) reflect a Judicial Conference decision to establish a new fee of \$150.00 for attorney admissions, a new fee of \$15.00 for a duplicate certificate of admission, an increased fee of \$15.00 for a certificate of good standing, and an increased fee of eight cents per page for PACER internet access. The Federal Circuit fee of \$25.00 for an attorney admission and fee of \$10.00 for a duplicate certificate of admission continue.

The change to Federal Circuit Rule 28(a)(5), now requires that the jurisdictional statement also include a statement that the judgment or order appealed from is final or otherwise appealable.

The changes to Federal Circuit Rule 35 and 47.11 are a result of a change to the Federal Rules of Appellate Procedure effective December 1, 2005.

Suggestions regarding the court's Rules of Practice should be submitted to:

Clerk of Court
United States Court of Appeals for the Federal Circuit
717 Madison Place, NW
Washington, DC 20439

or

rules@cafc.uscourts.gov

Sincerely yours,

Jan Horbaly

Rule 27. Motions

...

(h) Delegation of Authority to the Clerk. The clerk is authorized to act on consented to or unopposed motions to:

- (1) dismiss an appeal, petition for review, or application for an extraordinary writ, with or without prejudice to reinstatement;
- (2) remand or transfer a case;
- (3) reinstate a case that was dismissed by the clerk for failure to comply with the rules;
- (4) extend for not more than 60 days the time for filing a principal brief and extend for not more than 30 days the time for taking any other action required or permitted by the rules or an order of the court;
- (5) extend the time for a court reporter to file the transcript of the trial proceedings with the clerk of the district court;
- (6) stay issuance of a mandate for not more than 30 days pending application to the Supreme Court of the United States for a writ of certiorari;
- (7) consolidate appeals;
- (8) correct a brief or other paper;
- (9) correct or modify a record in accordance with Federal Rule of Appellate Procedure 10(e) or 16(b);
- (10) stay further proceedings;
- (11) withdraw or substitute an appearance;
- (12) advance or continue a case;
- (13) file a supplemental appendix of material inadvertently omitted from the joint appendix; or
- (14) proceed in forma pauperis.

Practice Notes

[Federal Circuit Rule 27]

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Limits on Consent Motions; Motions Referred to Panel. Neither the clerk nor the court is required to grant relief just because the parties agree it should be granted. The clerk's authority to act on specified motions includes the authority to grant the requested relief in whole or part or to refer the motion to a judge or panel. If the clerk grants an unopposed motion to extend the time to file a principal brief by 60 days, no further extensions should be anticipated. Once a case is assigned to a panel, the clerk refers all motions to the panel.

Rule 46. Attorneys

...

(c) Admission Fee. The fee for admission to the bar of the court is \$25, in addition to the Judicial Conference fee of \$150, payable to the clerk, for which the applicant will receive a certificate of admission. For a duplicate certificate, the fee is \$10, in addition to the Judicial Conference fee of \$15. ~~The clerk as custodian will deposit the fee in a special account designated by the court.~~

Rule 52. Fees

(a) Judicial Conference Schedule of Fees.

...

(3) Judicial Conference Schedule of Fees.

- (A) For docketing a case on appeal or review, or docketing any other proceeding: \$250. A separate fee must be paid by each party filing a notice of appeal in a district court, but parties filing a joint notice of appeal in a district court are required to pay only one fee. A docketing fee will not be charged for the docketing of a petition for permission to appeal unless the appeal is allowed.
- (B) For every search of the records of the court and certifying the results: \$26.
- (C) For certifying any document or paper, whether the certification is made on the document or by separate instrument: \$9.
- (D) For reproducing any record or paper: 50 cents per page. This fee applies to paper copies made from original documents or from microfiche or microfilm reproductions of the original records.
- (E) For reproduction of magnetic tape recordings, cassette or reel-to-reel: \$26 including the cost of materials.
- (F) For reproduction of the record in any appeal in which the requirement of an appendix is dispensed with by any court of appeals pursuant to Federal Rule of Appellate Procedure 30(f): a flat fee of \$71.
- (G) For each microfiche or microfilm copy of any court record available: \$5.
- (H) For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the court's place of business: \$45.
- (I) For a check paid to the court that is returned for insufficient funds: \$45.
- (J) For original admission of attorneys to practice, \$150 each, including a certificate of admission. For a duplicate certificate of admission or certificate of good standing, \$15. Federal Circuit Rule 46 requires an additional local fee of \$25 for admission and \$10 for a duplicate certificate.

Rule 28. Briefs

(a) Contents of Brief; Organization of Contents; Addendum; Binding. Briefs must be bound as prescribed in Rule 32 of the Federal Rules of Appellate Procedure and must contain the following in the order listed:

. . .

- (5) the jurisdictional statement including a representation that the judgment or order appealed from is final or, if not final, the basis for appealability (e.g., preliminary injunction, Fed. R. Civ. P. 54(b) certification of final judgment as to fewer than all of the claims or parties, etc.)

Federal Circuit Rule 35

Rule 35. En Banc Determination

(a) General.

~~(1) **Decision to Review En Banc.** A case will be reviewed en banc if a majority of the judges in regular active service agree to hear it en banc. Judges who are recused or disqualified from participating in the case are counted as judges in regular active service.~~

~~(2)~~¹ ...

~~(3)~~² ...

Federal Circuit Rule 47.11

Rule 47.11. Quorum

A quorum is a simple majority of a panel of the court or of the court en banc. In determining whether a quorum exists for en banc purposes, more than half of all circuit judges in regular active service, including recused or disqualified judges, must be eligible to participate in the en banc process. If a judge of a panel that has heard oral argument or taken under submission any appeal, petition, or motion is unable to continue with consideration of the matter because of death, illness, resignation, incapacity, or recusal, the remaining judges will determine the matter if they are in agreement and no remaining judge requests the designation of another judge. If the remaining judges are not in agreement or if any remaining judge requests the designation of another judge, the remaining judges will promptly advise the chief judge who will secure another judge to sit with the panel. The clerk will advise the parties of the designation, but no further argument will be had or briefs received unless ordered by the court.